

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JULIE ROBERTSON,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:10-cv-779

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff counsel's Motion for Award of Attorney Fee Pursuant to 42 U.S.C. § 406(b). (Dkt. #18). Plaintiff's counsel seeks \$2,500.00 in fees. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's motion be **granted**.

On February 28, 2011, the Commissioner's decision was reversed, pursuant to stipulation, and this matter remanded for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff was subsequently awarded disability benefits, including past-due benefits in the amount of thirty-nine thousand, one-hundred ninety-two dollars (\$39,192.00). (Dkt. #18, Exhibit A). Counsel now submits the present motion seeking an award of fees and costs pursuant to the contingent fee arrangement into which he and Plaintiff entered. (Dkt. #18, Exhibit B). According to this fee arrangement, Plaintiff agreed to pay counsel a fee equal to "twenty-five percent (25%) of the past-due benefits" if her claim was successful. *Id.* In this case, twenty-five percent of Plaintiff's past-due benefits equals nine-thousand, seven-hundred, ninety-eight dollars (\$9,798.00). Counsel has already received five-thousand, three-hundred dollars (\$5,300.00) for his representation of Plaintiff at the administrative level. (Dkt. #18, Exhibit

A). In light of such, counsel and Plaintiff have agreed to reduce counsel's remaining fee to two-thousand, five-hundred dollars (\$2,500.00). (Dkt. #18, Exhibit C). Defendant does not oppose the present motion.

The Social Security Act provides that "whenever a court renders a judgment favorable to a claimant...who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U.S.C. § 406(b)(1)(A). Counsel's request is reasonable and consistent with his fee agreement with Plaintiff. Accordingly, the undersigned recommends that the present motion be **granted** and that counsel be awarded \$2,500.00 (two-thousand, five-hundred dollars) in fees and costs pursuant to 42 U.S.C. § 406(b).

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff counsel's Motion for Award of Attorney Fee Pursuant to 42 U.S.C. § 406(b), (dkt. #18), be **granted** and counsel awarded \$2,500.00 (two-thousand, five-hundred dollars) in fees and costs pursuant to 42 U.S.C. § 406(b).

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: February 5, 2013

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge